

PT 96-41
Tax Type: PROPERTY TAX
Issue; Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CARLOS & LYNN COOLEY)	
d/b/a COOLEY BROTHERS,)	
APPLICANT)	Docket No: 94-46-42
)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 17-20-200-007
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE:

Ms. Brenda Gorski, Assistant State's Attorney, Kankakee County, on behalf of the County of Kankakee and its Board of Review.

SYNOPSIS:

This proceeding raises the issue of whether a leasehold, ostensibly held by applicant's partnership, should be exempt from 1994 real estate taxes as a "property belonging to any Airport authority and used for Airport Authority purposes..." as described in 35 ILCS 200/15-160.¹. The controversy arose as follows:

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq*).

On December 19, 1994, Carlos Cooley, as an equal partner in Cooley Brothers, filed an Application for Property Tax Exemption with the Kankakee County Board of Review (hereinafter "Board"). Said Application sought exemption of Cooley Brothers' purported leasehold interest in the parcel assigned Permanent Index Number 17-20-200-007 by the Kankakee County Supervisor of Assessments.

The Board subsequently recommended to the Department of Revenue, (hereinafter "the Department") that the requested exemption be denied. However, on November 15, 1995, the Department issued a certificate exempting 90% of the leasehold from 1994 real estate taxes.

The County of Kankakee and its Board of Review, through the Kankakee County State's Attorney, filed a timely request for hearing November 29, 1995. Said hearing was held August 1, 1996 and continued to August 15, 1996 in order to allow the parties to present additional evidence. Following submission of all evidence and a careful review of the record, it is recommended that the entire leasehold be placed back on the tax rolls for the 1994 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein (described above) are established by the admission into evidence of Dept. Gr. Ex. No. 1, Dept. Ex. No. 2 and Dept. Ex. No. 3.

2. On December 5, 1958, Carlos Cooley and his brother Lynn Cooley, each as equal one-half owners, formed a partnership, (the applicant herein, 8/1/96 Tr. p. 33²), named Cooley Brothers. Applicant Ex. No.6.

². As noted in the synopsis, hearings in this matter were held August 1 and August 15, 1996. The hearings were conducted before different court reporters who submitted separate transcripts. As a result, the hearing transcripts are not numbered consecutively. Thus, for citation purposes herein, I shall refer to any findings of fact based on the August 1, 1996 transcript as "8/1/96 Tr., p.____." Any findings of fact based on the August 15, 1996 transcript shall be cited "8/15/96 Tr., p. ____."

3. According to its partnership agreement, the purposes of Cooley Brothers, (hereinafter "the partnership") are to "invest in items for resale, including automobiles, motorcycles, boats, airplanes, real estate and to operate an auto body repair shop, but not limited to the above items." [sic]. *Id.* However, the partnership's 1994 Federal Tax Return, (IRS form 1065) lists its principal business activity as "rental." Applicant Ex. No. 7.

4. Cooley Bros. Aviation, Inc., (hereinafter "the "corporation") was incorporated under the Business Corporation Act of Illinois on February 7, 1994. Applicant Ex. No. 7.

5. The corporation's general purposes, as described in its Articles of Incorporation, are "[t]he transaction of any or all lawful business for which Corporations can be incorporated under the Business Corporation Act." *Id.* Its specific purposes are to maintain, as well as buy and sell, aircraft. 8/1/96 Tr. p. 26.

6. Carlos and Lynn Cooley are listed as incorporators of Cooley Bros. Aviation, Inc. *Id.*

7. The partnership has no stock or other ownership interest in the corporation. *Id.*

8. The Kankakee River Valley Area Airport Authority, (hereinafter the "Authority") is a special district organized pursuant to 70 **ILCS** 15/1 *et seq.* 8/1/96 Tr., p. 12.

9. The subject property is a one and a half acre parcel located on the grounds of the Greater Kankakee Airport. Dept. Group. Ex. No. 1. It is located at "E. 4000 S. Road" in Kankakee, IL., identified by Permanent Index Number 17-20-200-007 and improved with a one story, 5,100 square foot building that is used for aircraft maintenance. *Id.*; 8/1/96 Tr. pp. 13-14.

10. The improvement is a steel structure, metal fabricated building (hereinafter "the building") with concrete floors. 8/1/96 Tr., p. 13. The interior features 1,260 feet of office space, divided into five separate offices

and washrooms. *Id.* The remainder of the interior has concrete floors and a large overhead door, which measures approximately 50' by 18', that is used for moving aircraft in and out of the building. *Id.*

11. The underlying land, which the Authority owns, is exempt from real estate taxes pursuant to a Real Estate Exemption Certificate issued by the Department August 14, 1993. 8/1/96 Tr. pp. 15-17; Board's Ex. No. 1.

12. The corporation obtained a leasehold interest in the building via an operator's lease agreement dated September 15, 1993. Dept. Group. Ex. No. 1; 8/1/96 Tr. p. 38. Under the terms of this agreement, the corporation, as operator, became obligated to engage in airframe and power plant repairs. Dept. Gr. Ex. No. 1.

13. The leasehold was originally scheduled to take effect September 15, 1993 and last until September 14, 1994. However, the agreement granted the corporation an option to renew, which, subject to the Authority's approval, could be exercised for a maximum of four consecutive one-year terms. The corporation exercised its option for the year commencing September 15, 1994 on July 28, 1994. *Id.*

14. The agreement provided that the corporation could not assign its interest to another entity without the Authority's express written consent. *Id.* It further required that the corporation pay, as rent to the Authority, 2% of its gross business receipts excluding aircraft sales. *Id.*; 8/1/96 Tr. p. 46.

15. The agreement also provided that the corporation would pay "all fees, licenses and taxes assessed on property used by [the corporation] in the operation of its business ...[.]" to the appropriate authorities. *Id.*; 8/1/96 Tr. p. 46.

16. During the 1994 tax year, the corporation used the building for purposes of performing aircraft maintenance and repair as well as selling aircraft. 8/1/96 Tr. p. 39. Its total revenues from these operations amounted

to \$167,484.00. Applicant. Ex. No. 2. These revenues as were apportioned as follows:

- A. \$82,438.00, or 49.22%³ of total revenue, from sales for maintenance and licensing. 8/1/96 Tr. p. 52.
- B. \$81,950.00, or 48.93% of total revenue came from the sales of three aircraft. 8/1/96 Tr. p. 53.
- C. \$1,500.00, or less than 1% of total revenue, from unspecified commissions. *Id.*

17. The corporation's expenses for the 1994 assessment year totaled \$74,796.00. Its Federal Tax Return (IRS Form 1120S) indicates these expenses were apportioned as follows:

- A. \$13,807.00, or 18.46% of total expenses, from repairs and maintenance.
- B. \$15,960, or 21.33%, from rents paid.
- C. \$3,515.00, or 4.69% of total expenses, from taxes and licenses.
- D. \$100.00, or less than 1% of total expenses, from depreciation.
- E. \$,657.00, or 7.56%, from advertising.
- F. \$34,433.00, or 46.03%, from "other expenses."⁴

Applicant Ex. No. 2.

³. I derived the revenue and expense percentages by dividing the income derived from or expended on a particular activity by the sum total of all revenues or expenses, as is appropriate to the particular situation. Thus, for example, revenue from maintenance and licensing (\$82,438.00)/total revenue (\$167,484.00) = 49.22%.

⁴. The "other expenses" came from a variety of sources and were specifically apportioned as follows: \$1,982.00, or 2.6% of total expenses, from unspecified commission expenses; \$690.00, or less than 1%, from freight; \$6,173.00, or 8.2%, from shop supplies; \$256.00, or less than 1%, from office supplies and postage; \$1,685.00, or 2.25%, from fuel; \$179.00, or less than 1%, from entertainment; \$802.00, or approximately 1%, from telephone; \$3,213.00, or 4.3%, from utilities; \$12,879.00, or 17.2%, from insurance; \$600.00, or less than 1%, from professional fees; \$2,622.00, or 3.5%, from dues and subscriptions; \$2,102.00, or 2.8%, from travel; \$49.00, or less than 1%, from bank service charges; \$212.00, or less than 1% in other unspecified business expenses; \$730.00, or less than 1%, from delivery and \$259.00, or less than 1%, from credit card fees.

18. The partnership's 1994 Federal Tax Return (IRS Form 1065) listed total gross receipts or sales in the amount of \$6,497.00. Applicant Ex. No. 7. Most of these receipts came from real estate rentals. 8/1/96 Tr. p. 54.

19. The partnership paid no rent during the 1994 assessment year and incurred only \$65.00 in total expenses during that time. *Id.* These expenses were incurred solely as a result of taxes and license fees. *Id.*

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption of the above-referenced leasehold from property taxes for the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that said leasehold qualifies for partial exemption under 35 **ILCS** 200/15-160 should be reversed. In support thereof, I make the following conclusions:

Section 200/15-60 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*,⁵ provides in relevant part that :

All property belonging to any Airport Authority and used for Airport Authority purposes or leased to another entity, which property use would be exempt under this Code if it were owned by the lessee entity, is exempt [from real estate taxation]. 35 **ILCS** 200/15-160.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research

⁵. As noted in footnote 1, only the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 *et seq.* These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. See, 35 **ILCS** 200/32-20.

Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

At the outset, let me reiterate that exemption of the subject property's underlying land is not at issue in this proceeding. Such land is exempt not only by operation of Section 200/15-160 but also, by authority of Departmental Exemption Certificate (Board's Ex. No. 1) and Section 15/19 of the Kankakee River Valley Area Airport Authority Act, 70 **ILCS** 15/1 *et seq.*, of which I take administrative notice. Therefore, the limited issue before me is whether the leasehold itself qualifies for exemption.

The partnership applied for the property tax exemption for the leasehold at issue. In order to resolve this matter, therefore, it is first necessary to determine whether the corporation or partnership held the leasehold interest during the 1994 assessment year. Under current Illinois law, this determination is not necessarily governed by an analysis of which party holds legal title to, (or, in the present case, is the nominal lessee of), the subject leasehold. See, People v. Chicago Title and Trust, 75 Ill.2d 479 (1979), (hereinafter "CT&T"). Rather, such analysis must focus on the realities of ownership, the key elements of which are control and the right to enjoy the benefits of the property. CT&T, *supra*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996), (hereinafter "CPA"); Coles Cumberland Professional Development Corporation v. Department of Revenue, 4-95-0913, (Fourth Dist., Nov. 7, 1996). In making this analysis however, it must be remembered that each year sought for tax exemption stands alone and a decision adjudicating tax status for a particular year has no bearing on a subsequent year, even where ownership and

use remain the same. Jackson Park Yacht Club v. Department of Revenue, 93 Ill. App.3d 542 (1st Dist. 1981).

Here, the Operator's Lease Agreement (hereinafter "Agreement") and letter from the corporation dated July 28, 1994, (both of which are included in Dept. Gr. Ex. No. 1), establish that the corporation was both nominal lessee and enjoyed the practical realities of ownership during the 1994 tax year. Its plain language makes clear that, so long as the agreement remains in effect, *the corporation*, as operator, is leasing and renting the building and other related considerations "from the Authority." Furthermore, the Agreement obligates *the corporation* to pay rent, property taxes and perform services related to aircraft maintenance. More importantly, the Agreement vests the *corporation* with the option to renew and specifically prohibits the corporation from assigning its interest without written permission from the Authority.

The partnership seeks to defeat the preceding analysis by attempting to prove that it acted as the corporation's landlord. One of the partners, Carlos Cooley, testified to such an arrangement. 8/1/96 Tr. p. 24. He also introduced a lease, dated January 2, 1992, (Applicant Ex. No. 1), which purports to demise the subject property, on a month-to-month basis, from the partnership as landlord to the corporation as tenant.

This lease may have governed the relationship between the partnership and corporation *before* the latter entered into the Agreement on September 15, 1993. Nevertheless, the plain language of the Agreement, (in particular its effective dates and non-assignability clause), coupled with the aforementioned letter, clearly establish that *this document*, rather than the purported lease, governed all property interests in the subject leasehold during the 1994 assessment year.

Moreover, the partnership, (which is the applicant herein), failed to introduce any evidence establishing that the Authority consented to any type of assignment during the 1994 assessment year. Consequently, the corporation could

not confer any of its interest on the partnership without violating the non-assignability clause.

The Agreement also provides that the Authority (rather than the partnership), holds the landlord's interest in the subject leasehold. It further specifies that the corporation's interest is limited to that of lessee acting in an operator's capacity. These considerations, together with the non-assignability clause, make it factually and legally impossible for the partnership to have acted as the corporation's landlord during the tax year in question.

Inasmuch as the preceding analysis establishes that the corporation, and not the partnership, was the leaseholder throughout the 1994 tax year, I conclude that the latter held no interest in the subject leasehold during that time. Accordingly, the partnership lacks "a direct and substantial interest in the subject matter which would be prejudiced by [denying the requested exemption] or benefitted by its [approval]." Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991). Therefore, I further conclude that the partnership lacks standing to bring the instant application for exemption. Hence, the Department's decision awarding it a partial exemption on the subject leasehold should be reversed in its entirety.

In making the above recommendation, I am not unaware that, in reality, these proceedings raise the issue of the corporation's entitlement to exemption under Section 200/15-160. However, the Departmental Regulations contained in 86 Ill. Admin. Code. ch. I, Sec. 200.165 mandate that any final administrative decision be based solely on the facts of record and reasonable inferences therefrom. Due to this mandate, I am constrained by such facts, which establish that the partnership, and not the corporation, is the applicant herein. Accordingly, Section 200.165 prohibits me from making any recommendation regarding the corporation in these proceedings.

WHEREFORE, for the reasons set forth above, it is my recommendation that the entire leasehold be placed back on the tax rolls for the 1994 assessment year.

Alan I. Marcus,
Administrative Law Judge

Date